

Chapter 27: Rules of Practice and Procedure of Gaming Conduct

Summary: This rule establishes procedures for the investigation and resolution of complaints received by the Gambling Control Board. This rule should be read in conjunction with the statutory provisions for adjudicatory proceedings in the Maine Administrative Procedure Act. The rule helps to ensure that the investigation and resolution of complaints is handled in an expeditious and procedurally fair manner.

SECTION 1. Licensing Actions

1. Complaints and Investigations:

A. All complaints shall be submitted to the board or the department in writing. The board may request that complaints be submitted on a complaint form authorized by the board and with supporting documentation or other materials. The department may initiate a complaint alleging any ground for disciplinary action.

B. The department or its designee shall investigate complaints in accordance with 8 M.R.S. § 1051(1). The department may provide the complainant with information obtained as part of its investigation, as the board or the department determines to be necessary to facilitate the investigation.

2. Notice of Complaints and Response

A. Notice: The board or its staff shall notify an individual or organization of the content of a complaint filed against the individual or organization. The notice shall be in writing. Service is complete upon mailing to the party or the party's attorney using the last known address, or upon in-hand delivery to the recipient or the recipient's office in accordance with 5 M.R.S. § 8051(2).

B. Response: A licensee who wishes to contest the complaint or dispute the information that forms the basis of the complaint must respond to the board in writing within thirty days of receipt of the board's notice.

C. Additional Information: The board, its staff, or the department may request additional information from the licensee in support of any response received. The board, its staff or the department may provide the complainant with a complete copy of or portions of the licensee's response or information, as the members or staff determine to be necessary to facilitate the investigation. The board, its staff or the department may request additional

~~information from the complainant in support of the original complaint or in response to the licensee's response.~~

~~2. 3-~~ Resolution of Complaints: The director must review all complaints and investigative files and, in the director's discretion, may consult with an Assistant Attorney General assigned to the board and the Maine State Police Commander of the unit that regulates gambling in the director's discretion. Following this review and any consultation, the director may take any of the following actions:

~~B. Complaint Committee: Copies of the complaint and the investigative file shall be submitted to the complaint committee for review. The committee shall consist of the director of the board, an Assistant Attorney General assigned to the board and the Maine State Police Commander of the unit that regulates gambling. After reviewing the information obtained, the committee will make a complaint presentation to the board and may recommend that any action authorized by Gambling Control Board statutes or rules be taken:~~

~~A. Setting the matter for hearing, in which case the director shall f~~File a "notice of complaint and request for hearing" with the board, in accordance with 8 M.R.S. § 1051(2);

~~B. Proceeding with~~ Issue a "notice of violation and proposed sanction" in accordance with 8 M.R.S. § 1051(2) and enter into a consent agreement with the licensee;

~~DC. Issuing~~ a letter of guidance or concern pursuant to 8 M.R.S. § 1053(4). A letter of guidance or concern issued by the director pursuant to this section may be appealed to the board in accordance with 8 M.R.S. § 1051(4); or

~~ED. Entering into a consent agreement~~ Request additional investigation; or

~~E5. Dismissing the complaint or otherwise close the investigation. Dismissal may be appropriate when the complaint alleges conduct that is not a violation of Gambling Control Board statute or rules, is factually unfounded, or is of insufficient gravity to warrant further action. Notice of dismissal must be sent to any complainants.~~

~~4. The Department shall send written notice to the licensee and the complainant of the date and time of the complaint committee's presentation to the board. Notice shall be sent at least fourteen days prior to the date of the meeting. Licensees and complainants may attend, but may not participate in the complaint presentation. The Board or the Department shall list for the licensee the materials that Board reviewed for the complaint committee presentation.~~

SECTION 2. Notice of Violation:

~~1. If, based upon the information obtained from the investigation, the board or the complaint committee~~ director determines that the complaint is or may be true and the violation is of sufficient gravity to warrant further action within the board's authority pursuant to 8 M.R.S. § 1053, the director may send the licensee may be sent a written notice of violation and proposed sanction.

2. The ~~director shall send the licensee a~~ written notice of violation ~~that~~ shall states the alleged violation, the statute or rule believed to have been violated, and the proposed resolution-, and ~~It shall~~ inform the licensee that the licensee has the right to request a hearing.

3. Service is complete upon mailing to the party or the party's attorney using the last known address, or upon in-hand delivery to the recipient or the recipient's office in accordance with 5 M.R.S. § 9051(3).

4. The licensee must file a written request for hearing within thirty days of receipt of the notice of opportunity for hearing. The request is considered filed when received by the director. The board may extend this period for good cause shown.

5. If the licensee makes a timely request for a hearing, that hearing shall be held in accordance with subsection three of this rule.

6. A consent agreement reached by the director and the licensee following a notice of violation must be presented to the Board. The Board may approve or reject a consent agreement, or may recommend amended language.

7. Failure to make a timely request for hearing shall be a waiver of any right to a hearing and may result in the proposed action of the board becoming final without further hearing, in accordance with 5 M.R.S. § 9053(3), if the notice of violation informed the licensee of the possibility of default .

SECTION 3. Hearings:

1. If, following an investigation, the board ~~director, in its discretion,~~ determines that the complaint involves issues of substantial public interest, ~~credibility determinations,~~ or otherwise determines that the matter should be set for hearing, the ~~director shall serve~~ notify the licensee ~~with the notice of complaint and request for hearing~~ in accordance with 5 M.R.S. §§ 9051(3) and 9052 and ~~shall file a copy with the board.~~

2. In the event of a hearing, the provisions of the Administrative Procedure Act, Title 5, Chapter 375, subchapter 4 will govern.

3. When the circumstances of a particular proceeding require more detailed procedures than those set forth in this rule, additional procedures may be specified by the hearing officer, by order applicable to that particular proceeding.

4. ~~3.~~ When a hearing is held, the board may appoint a hearing officer in conformity with the provisions of the Administrative Procedure Act to conduct the hearing and to make the proposed findings of fact and conclusions of law. If the board appoints a hearing officer to perform these tasks, the hearing may take place outside of the board's presence.

5. Following a hearing, any proposed findings of fact, or any proposed decision prepared by the hearing officer shall be in writing. A copy shall be provided to each party, with the opportunity to file responses or exceptions. The hearing officer shall set the time within which responses or exceptions may be filed. The hearing officer may amend the proposed findings of fact or decision based upon the responses and exceptions filed. A decision of the board upon a recommended decision of the hearing officer constitutes final agency action.

6. For each violation of 8 M.R.S. Chapter 31, the board's rules, or conditions of licensure or registration, the board may take one or more of the following actions in accordance with 8 M.R.S. § 1053(1):

A. Issue a warning, censure or reprimand to a licensee or registrant. Each warning, censure or reprimand issued must be based upon a violation of a different applicable law, rule or condition of licensure or must be based upon a separate instance of actionable conduct or activity;

B. Suspend a license or registration for up to 360 days for each violation of an applicable law, rule or condition of licensure or registration or instance of actionable conduct or activity. Suspensions may be set to run concurrently or consecutively. Execution of all or any portion of a term of suspension may be stayed pending successful completion of conditions of probation, although the suspension remains part of the licensee's or registrant's record;

C. Revoke a license or registration;

D. Impose a fine of up to \$100,000 for each violation of an applicable law, rule or condition of licensure or registration or instance of actionable conduct or activity;

E. Impose conditions of probation upon a licensee or registrant. Probation may run for such time period as the board determines appropriate; and

F. Impose costs of investigation and hearing.

STATUTORY AUTHORITY: 5 M.R.S. §§ 8051, 9062; 8 M.R.S. §§ 1003(1), 1051–1054.

EFFECTIVE DATE: